

Essential Clauses in the System's Investment Consultant Contract

As part of the Request for Proposal (RFP) process, you are required to review the Indiana Public Retirement System's (the "System") boilerplate investment consultant contract and submit comments with your proposal. The following clauses are non-negotiable. If you believe that a clause will affect your risk of liability, you should adjust your bid price accordingly.

(Section 17) Record Retention and Inspection

The System will not agree to any provision eliminating this requirement or requiring the System records to be retained for less than applicable law, including Indiana's public records retention schedule.

(Section 35) Audits

The System is subject to audits by the Indiana State Board of Accounts. Therefore, the System will not accept any substantive modifications to the language under this Section.

(Section 22B) Laws and Ethics

The Indiana Attorney General requires this provision in all State of Indiana contracts. Contractor and its agents must abide by the ethical requirements set forth in Indiana Code, including provisions regarding the telephone solicitation of customers. As the System is subject to the jurisdiction of the State Ethics Commission and State ethics rules, the System will not agree to delete these provisions.

(Section 18) Confidentiality

Although the System is subject to Indiana's public records laws, many of the System records are confidential public records that cannot be disclosed. In addition, the Indiana Attorney General requires the Social Security disclosure clause in all State of Indiana contracts.

(Section 25) Disputes

The System will not agree in advance to any binding resolution clauses, except those of the State of Indiana courts; however, the System may agree to alternative dispute resolution options, should a dispute arise.

(Section 34) Drug-Free Workplace Certification

To ensure compliance with the Governor of Indiana's executive order on drug-free workplaces, these provisions are required in all the System contracts. The System will not accept any modifications of the language under this Section.

(Section 24) Governing Law

The contract must be governed by the laws of the State of Indiana, and suit, if any, must be brought in a state court of jurisdiction in the state of Indiana. As a quasi-governmental agency, the System is protected by the Eleventh Amendment of the United States Constitution, which guarantees that state governments hold sovereign immunity and are immune from federal lawsuits initiated by citizens of another state. The System will not agree to any provision that can be construed as waiving the System's Eleventh Amendment rights.

(Section 13) Indemnification

The System will not agree to any modification that limits Contractor's responsibility to indemnify the System as described in this Section. The Indiana Attorney General has opined that any agreement requiring the System to indemnify Contractor is a violation of the Indiana Constitution and against public policy. In addition, the System will not agree to any modification that limits the System's ability to recover damages or limits Contractor's liability as described in the contract.

(Section 21) Nondiscrimination

The Indiana Attorney General requires this provision in all State of Indiana contracts. The System will not agree to limit Contractor's liability under this provision, nor will the System agree to substitute Contractor's discrimination policy for the requirements under this Section.

(Section 40) Minority and Women's Business Enterprise Compliance

Indiana law requires this provision in all System contracts. In the event Contractor uses a subcontractor to complete services pursuant to this contract, Contractor must visit the Indiana Department of Administration's Web site, which contains a list of subcontractors registered as Minority Business Enterprises and/or Women's Business Enterprises. If a subcontractor who performs services required under the contract is listed on the Web site, Contractor must give that subcontractor the opportunity to bid. If Contractor does not use a subcontractor to complete services pursuant to this contract, Contractor will be unaffected by this provision.

(Section 14G) Investigations and Complaints

As part of the System's fiduciary and due diligence obligations, this is an essential clause in the System's contracts. The System will not accept material changes to this provision.

Additional contract provisions to which the System will not agree:

- Any provision requiring the System to provide insurance or an indemnity;
- Any provision requiring the contract to be construed in accordance with the laws of any state other than Indiana;
- Any provision requiring suit to be brought in any state other than Indiana;
- Any mandatory dispute resolution other than the courts;
- Any provision requiring the System to pay taxes;
- Any provision requiring the System to pay penalties, liquidated damages, interest, or attorney fees;
- Any provision modifying the statute of limitations;
- Any provision relating to a time in which the System must make a claim;
- Any provision requiring payment in advance, except for rent; and
- Any provision limiting disclosure of information in contravention of the Indiana Access to Public Records Act

Acknowledgement

We have reviewed and agree to the System's mandatory contract provisions.

Signature: _____

Name: _____

Title: _____

Company: «Company_Name»

Date: _____

INVESTMENT CONSULTING AGREEMENT

THIS INVESTMENT CONSULTING AGREEMENT (“Consulting Agreement”) is made effective this ____ day of _____, 20____ (the “Effective Date”), by and between Indiana Public Retirement System (“INPRS”) and _____ (“Consultant”).

WHEREAS, INPRS has determined that it is in its best interests to enter into a new agreement with Consultant to provide **[hedge fund/private equity]** consulting services for its portfolio of assets; and

WHEREAS, Consultant desires to provide such services for INPRS;

NOW, THEREFORE, in consideration of the above-stated recitals, the mutual promises, covenants, representations, and conditions contained herein, and the mutual benefits to be derived therefrom, INPRS and Consultant agree as follows.

1. Duties of Consultant

The Consultant shall provide the **[hedge fund/private equity]** consulting services (“Consulting Services”), described in Exhibits A, which is attached hereto and incorporated herein by reference.

2. Term

This Consulting Agreement shall commence on the Effective Date and shall continue in full force and effect until the third (3rd) anniversary of the Effective Date, unless otherwise terminated, modified, or renewed in writing by the parties. This Consulting Agreement may be renewed under the same terms and conditions by mutual written agreement of the parties for an additional three-year period consistent with the terms set forth in Section 20. This Consulting Agreement will automatically renew on a month-to-month basis after the expiration date for a period not to exceed six (6) months.

3. Consideration

INPRS agrees to pay Consultant, and Consultant agrees to accept as full compensation for all Consulting Services rendered, a fee calculated at a rate and upon such terms as may from time to time be determined by the mutual agreement of the parties and, initially, in accordance with Exhibits B Schedule of Fees, attached hereto and incorporated by reference herein.

4. Definitions, Gender and Number

For purposes of this Consulting Agreement, capitalized terms not otherwise defined herein shall have the meanings set forth in this Section. In this Consulting Agreement, unless the context otherwise requires, the masculine, feminine, and neuter genders and the singular and plural include one another.

- A. Agents.** “Agents” means any of Consultant’s employees, agents, or representatives providing services in connection with this Consulting Agreement. “Agents” does not include independent service providers, including, but not limited to, broker/dealers and securities pricing services.
- B. Assets.** “Assets” means those securities, bonds, instruments, contracts, commercial papers, real property and cash owned by INPRS that the Board, in its sole discretion, may from time to time appoint Consultant to provide Consulting Services pursuant to the terms of this Consulting

Agreement, together with all interest, earnings, accruals, capital growth, and any and all other additions, substitutions, and alterations thereon or thereto.

- C. Board.** “Board” means the INPRS Board of Trustees responsible for the management and administration of INPRS.
- D. Claims.** “Claims” means any and all claims, damages, losses, liabilities, suits, costs, charges, expenses (including, but not limited to, attorneys’ fees and costs), judgments, fines, and penalties of any nature whatsoever that may be brought against INPRS in connection with the performance of this Consulting Agreement.
- E. Effective Termination Date.** “Effective Termination Date” means the date on which work under this Consulting Agreement will formally cease, as specified in any notice of termination delivered by INPRS to Consultant or by Consultant to INPRS.
- F. Investment Guidelines.** “Investment Guidelines” means the investment policies, guidelines, standards, and objectives set forth in INPRS’ Investment Policy Statement (“IPS”), a copy of which is attached hereto as Exhibit C and is incorporated herein in its entirety, and the scope of services enumerated within this Consulting Agreement.
- G. Legal Requirements.** “Legal Requirements” means all foreign, international, federal, state, county, and local laws, and regulations, ordinances, registrations, filings, approvals, authorizations, consents and examinations which may apply to INPRS or Consultant in relation to their performance under this Consulting Agreement.
- H. Standard of Care.** “Standard of Care” refers to the standard governing Consultant’s performance as a fiduciary of INPRS with respect to the performance of services under this Consulting Agreement and requires Consultant to discharge each of its duties and exercise each of its powers under this Consulting Agreement with the care, skill, prudence, and diligence that an expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims.
- I. Fund Records.** “Fund Records” means all records related to the Assets, including, but not limited to, any pertinent transaction, activity, time sheets, cost, billing, accounting and financial records, proprietary data, electronic recordings, and any other records created by Consultant or its Agents in connection with this Consulting Agreement.

5. Appointment of Consultant and Acceptance of Appointment

INPRS hereby appoints Consultant as a fiduciary with respect to the performance of services under this Consulting Agreement. Consultant hereby accepts such appointment and agrees to execute its duties according to the terms, conditions, and standards set forth in this Consulting Agreement.

6. Standard of Care

Consultant acknowledges that this Consulting Agreement places it in a fiduciary relationship with INPRS with respect to the performance of services under this Consulting Agreement. Consultant holds itself out as an expert with respect to consulting on alternative investments by large trust and investment funds. Consultant represents itself as possessing greater knowledge and skill than the average person. Accordingly, Consultant is held to the Standard of Care, as defined in Section 4 of this Consulting Agreement. Consultant shall cause any and all of its Agents to exercise the same Standard of Care.

Consultant shall be liable to INPRS for any Claim that arises from or relates to any failure by Consultant or any of its Agents to exercise this Standard of Care. The Consultant and its subsidiaries and/or affiliates may render investment management services to other persons and may engage in or possess an interest in other real estate or business ventures, which ventures may be competitive with the Assets.

7. Limited Status as Agent

Consultant shall be deemed the agent of INPRS for the sole and limited purpose of consulting on the Assets. This Consulting Agreement is not intended and shall not be construed to create the relationship of servant, employee, partnership, joint venture, or association as between INPRS and Consultant. For all purposes, including, but not limited to, Workers' Compensation and unemployment liability, Consultant understands and agrees that all persons furnishing services pursuant to this Consulting Agreement are deemed employees solely of Consultant and not of INPRS.

8. Written Reports

Consultant shall provide INPRS with the periodic written reports mutually agreed upon by INPRS and Consultant. An authorized officer of Consultant shall sign all reports and shall certify that such reports are accurate and consistent with all applicable Investment Guidelines, unless otherwise indicated. INPRS agrees that Consultant, in the maintenance of its records and preparation of its reports, does not assume responsibility for the accuracy of any information furnished by INPRS, INPRS' custodian, or any other person or firm.

9. Meetings

At INPRS' request and at mutually agreed upon times, Consultant shall meet with INPRS to review Consultant's performance and to discuss Consultant's present and future investment strategy. Consultant shall be available upon reasonable notice to answer questions by INPRS' staff and Board members from time to time as needed, without additional charge.

10. Invoices for Compensation

Consultant agrees to execute such payment or invoice forms as are required by INPRS. Consultant shall submit to INPRS a quarterly invoice within thirty (30) calendar days of the close of the quarter for which services were provided. Each invoice shall include the quarterly share of Consultant's fee (prorated for any partial quarter) as set forth in the then-current Schedule of Fees. Invoices shall only cover work already performed because no compensation shall be paid to Consultant in advance of services rendered. All payment obligations shall be made in arrears in accordance with Indiana law and INPRS policies and procedures.

11. Seminars and Training Programs

Subject to and in accordance with all applicable State of Indiana and INPRS' ethics rules and regulations, in the event Consultant conducts seminars, training sessions, or similar events that are generally made available to Consultant's clients, INPRS shall be invited to attend upon the same terms and conditions as such other clients.

12. Termination; Rights, Remedies, and Responsibilities upon Termination; Termination for Convenience

Notwithstanding anything to the contrary, this Consulting Agreement may be terminated by INPRS, in

whole or in part, for any reason, by delivery of a notice of termination at least thirty (30) days prior to the Effective Termination Date. Upon termination of this Consulting Agreement, Consultant shall retain all Fund Records in accordance with the record retention provisions set forth in the Record Retention and Inspection section of this Consulting Agreement.

The Consultant shall have the right to terminate this Consulting Agreement in the event that (i) INPRS fails to perform their obligations under this Consulting Agreement (including the obligation to pay fees billed by Consultant), (ii) the Consultant has given ninety (90) days advance written notice of intent to terminate INPRS, and (iii) INPRS have not fully performed its obligations to Consultant within such ninety (90) day period.

Consultant shall be compensated for services rendered prior to the Effective Termination Date.

Following the Effective Termination Date, Consultant shall submit to INPRS, in the form and with any reasonable certifications as may be prescribed by INPRS, Consultant's final invoice ("Termination Invoice"). The Termination Invoice shall prorate Consultant's quarterly fees, on a daily basis, for work already performed but for which Consultant has not been compensated through the Effective Termination Date, in accordance with Consultant's then-current compensation level. Consultant shall submit such Termination Invoice no later than thirty (30) days after the Effective Termination Date. Upon Consultant's failure to submit its Termination Invoice within the time allowed, INPRS may determine, on the basis of information available to it, the amount, if any, due to Consultant and such determination shall be deemed final. After INPRS has made such determination, or after Consultant has submitted its Termination Invoice, INPRS shall authorize payment to Consultant.

Except as provided in the next paragraph, INPRS will not be liable for services performed after the Effective Termination Date. Consultant shall be compensated for services herein provided, but in no case shall total payment made to Consultant exceed the original contract price plus changes approved or directed in writing by INPRS. In no event shall INPRS' termination of the Consulting Agreement under this Section be deemed a waiver of either party's right to make a claim against the other party for damages resulting from any default by such other party that occurred prior to the Effective Termination Date. Additionally, INPRS may terminate this contract immediately in the event that INPRS, in its sole discretion, considers such action necessary to protect the plan or assets in the trust.

In the event of any termination of this Consulting Agreement, unless otherwise expressly directed by INPRS, Consultant shall take all necessary steps to stop services under this Consulting Agreement on the Effective Termination Date. All terms and conditions set forth herein shall continue to apply through the period following the Effective Termination Date ("Transition Period"), during which Consultant shall continue to serve as Consultant hereunder at the then-existing compensation level for the duration of the Transition Period. Such Transition Period shall not exceed three (3) months after the Effective Termination Date. Consultant shall perform services required under this Consulting Agreement that are necessary to complete any transactions pending on the Effective Termination Date. Consultant shall cooperate with INPRS in good faith to affect an orderly transfer of such services and all applicable records to a successor manager by the Effective Termination Date. After the additional services have been performed and the Transition Period is complete, Consultant, subject to the terms and conditions of this Consulting Agreement, shall be compensated for the Transition Period at its then-existing compensation level.

The rights and remedies provided by this Section are not exclusive, but cumulative, and in addition to any other rights and remedies provided by law, in equity, or under any provisions of this Consulting Agreement.

13. Indemnification

Consultant shall indemnify, defend, and hold harmless INPRS, its trustees, officers, employees, and agents, from and against any and all Claims arising from or relating to any bad faith, negligence, willful misconduct, improper or unethical practice, knowing infringement of intellectual property rights, breach of fiduciary duty, breach of trust, breach of confidentiality, violation of any Legal Requirement, or any other negligent or willful act or omission of or by Consultant or any of its Agents acting in connection with this Consulting Agreement. This indemnification shall survive any termination of this Consulting Agreement. INPRS shall not provide such indemnification to Consultant.

14. Consultant's Representations, Warranties, and Covenants

Consultant acknowledges, represents, warrants, covenants, and agrees to the following provisions:

- A. Authorization.** Consultant has duly authorized, executed, and delivered this Consulting Agreement, and this Consulting Agreement constitutes the legal, valid, and binding agreements and obligations of Consultant, enforceable against Consultant in accordance with its terms, except insofar as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar limitations on creditors' rights generally and general principles of equity. Consultant is not subject to or obligated under any law, rule, or regulation of any governmental authority, or any order, injunction, or decree, or any agreement that would be breached or violated by Consultant's execution, delivery, or performance of this Consulting Agreement.
- B. Quality of Services.** All services that Consultant provides hereunder shall meet the requirements and standards set forth in this Consulting Agreement and any exhibits, schedules, and appendices attached hereto. At INPRS' request, Consultant shall promptly correct any errors or omissions in the provision of such services.
- C. Contingent Fees.** Consultant has not employed or retained any person or selling agency to solicit or secure this Consulting Agreement under any agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees of Consultant and Consultant's affiliates or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business. If Consultant in any way breaches or violates this warranty, INPRS shall have the right to immediately terminate this Consulting Agreement for default and, in INPRS' sole discretion, to deduct from Consultant's compensation under this Consulting Agreement, or to otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
- D. Gratuities.** Consultant has not offered or given any gratuities in the form of gifts, entertainment or otherwise, to any officer, fiduciary, or employee of INPRS or the State of Indiana with a view toward securing this Consulting Agreement or securing any favorable determination made concerning the award of this Consulting Agreement. Consultant covenants that no such gratuities will be given to any such person with a view toward securing any favorable treatment concerning the performance and/or continuation of this Consulting Agreement. If it is found that Consultant has offered or given such gratuities, INPRS may terminate this Consulting Agreement upon one (1) calendar day's written notice.
- E. Intellectual Property.** In connection with its performance under this Consulting Agreement, Consultant shall not knowingly develop, provide, or use any program,

process, composition, writing, equipment, appliance, or device, or any trademark, service mark, logo, idea, or any other work or invention of any nature, or any other tangible or intangible assets that infringe or will infringe on any patent, copyright, or trademark of any other person or entity, or is or will be a trade secret of any other person or entity.

- F. Changes.** Consultant shall notify INPRS in writing within three (3) business days of any of the following changes:
- i.** Consultant becomes aware that any of its representations, warranties, and covenants set forth herein cease to be materially true at any time during the term of this Consulting Agreement;
 - ii.** There is any material change in Consultant's senior personnel assigned to perform services under this Consulting Agreement;
 - iii.** There is any change in control of Consultant; or
 - iv.** Consultant becomes aware of any other material change in its management or its business organization, including without limitation the filing for bankruptcy relief.
- G. Investigations and Complaints.** To the extent permitted by applicable law, Consultant shall promptly advise INPRS in writing of any extraordinary investigation, examination, complaint, disciplinary action, or other proceeding relating to or affecting Consultant's ability to perform its duties under this Consulting Agreement that is commenced by any of the following:
- i.** The Securities and Exchange Commission of the United States (the "SEC");
 - ii.** The New York Stock Exchange;
 - iii.** The American Stock Exchange;
 - iv.** The National Association of Securities Dealers;
 - v.** Any Attorney General or any regulatory agency of any state of the United States;
 - vi.** Any U. S. Government department or agency; or
 - vii.** Any governmental agency regulating securities of any country in which Consultant is doing business. Except as otherwise required by law, INPRS shall maintain the confidentiality of all such information until the investigating entity makes the information public.
- H. Registered Investment Advisor.** Consultant hereby represents that it is registered as an investment advisor with the SEC under the Investment Advisers Act of 1940, as amended ("Advisers Act"), unless exempted from registration by the SEC. Consultant shall immediately notify INPRS if at any time during the term of this Consulting Agreement it is not so registered or if its registration is suspended.

- I. Consultant's Agents.** The Agents of Consultant who will be responsible for performing under this Consulting Agreement are individuals experienced in the performance of the various functions contemplated by this Consulting Agreement and have not been convicted of any felony, found liable in any civil or administrative proceeding, or pleaded no contest or agreed to any consent decree with respect to any matter involving breach of trust, breach of fiduciary duty, fraud, securities law violations, or bankruptcy law violations.

Consultant understands and agrees that INPRS has relied upon the foregoing acknowledgments, representations, warranties, covenants, and agreements and that the same constitute a material inducement to INPRS' decision to enter into this Consulting Agreement.

15. Liability Insurance

Consultant shall provide proof of insurance coverage as set out in this Section. The intent of the required insurance is to protect INPRS and the State of Indiana from any claims, suits, actions, costs, damages, or expenses arising from any negligent or intentional act or omission of Consultant or subcontractor, or their Agents, while performing under the terms of this Consulting Agreement.

Consultant shall provide proof of insurance coverage, and such insurance coverage shall be maintained in full force and effect during the term of this Consulting Agreement, as follows:

- A. Commercial General Liability Insurance Policy.** Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity, but in no event less than \$1 million per occurrence and \$2 million general aggregate limit. Additionally, Consultant is responsible for ensuring that any subcontractors obtain adequate insurance coverage for the activities arising out of subcontracts. All insurance shall cover liability arising out of premises, operations, independent contractors, personal injury, and liability assumed under a contract.
- B. Professional Liability Insurance.** Such coverage shall cover loss resulting from Consultant's rendering or failing to render professional services. Consultant shall maintain this coverage with minimum limits of no less than \$__ million per claim, as applicable. If this policy is a "claims made" policy, Consultant shall purchase a "tail" that extends the coverage for at least one year from the expiration of this Consulting Agreement. If defense costs are paid within the limit of liability, Consultant shall maintain limits of \$__ million per incident, loss, or person, as applicable. If the policy contains a general aggregate or policy limit, then it shall be at least two (2) times the incident, loss, or personal limit.
- C. Financial Institutions Blanket Fidelity Bond.** Provide a fidelity bond(s) or insurance policy(ies) in adequate quantity to protect against legal liability arising out of Consulting Agreement activity, but no less than \$__ million per occurrence and an aggregate limit, if any, of not less than \$5 million for the following circumstances:
- i. Fidelity Loss.** Loss resulting directly from dishonest or fraudulent acts committed by an employee of the Consultant acting alone or in collusion with others.

- ii. Physical Loss. Loss by reason of the physical loss of, or damage to, or unexplained disappearance of INPRS funds, assets, or other property under the control of Consultant within any premises, wherever located, or while in transit.
- iii. Forged Instruments. Loss by reason of forgery or alteration of negotiable instruments, certificates of deposit, or letters of credit.
- iv. Computer Manipulation. Loss by reason of a dishonest or fraudulent act or computer manipulation that was committed by any employee of Consultant.

The insurance coverage required shall be issued by an insurance company or companies authorized to do business within the state of Indiana, and shall name the State of Indiana and its agents and employees, as well as INPRS and its agents and employees as additional insureds, where appropriate. All policies shall be primary to any other valid and collectable insurance. Consultant shall instruct the insurers to give INPRS thirty (30) days advance notice of any insurance cancellation.

Consultant shall submit to INPRS five (5) days prior to the Consulting Agreement's effective date certificates of insurance that outline the coverage and limits defined in this Section and demonstrate that such limits and coverage have been met or exceeded. Certificates of insurance that are accepted by INPRS shall be incorporated as part of this Consulting Agreement. Consultant shall submit renewal certificates as appropriate during the term of the Consulting Agreement or as requested by INPRS. Consultant shall promptly give INPRS notice of the cancellation of any policy for which a certificate of insurance or renewal certificate has been submitted to INPRS. Such notice of cancellation shall be as far in advance of such cancellation as possible.

By requiring insurance coverage, INPRS does not represent that coverage and limits will be adequate to protect Consultant or INPRS, and such coverage and limits shall not limit Consultant's liability under this Consulting Agreement.

Failure of Consultant to obtain and maintain the required insurance is a material breach of this Consulting Agreement, which may result in termination of this Consulting Agreement for cause, at INPRS' option.

16. Replacement of Consultant's Agents

Upon demand by INPRS, Consultant shall replace any Agent assigned to perform services under this Consulting Agreement who INPRS determines is unable to effectively execute the responsibilities required by this Consulting Agreement.

17. Record Retention and Inspection

- A. **Record Maintenance.** Consultant shall keep and maintain all records related to the Assets, including, but not limited to, any Fund Records, according to Consultant's record retention standards. Consultant shall keep and maintain Fund Records according to Consultant's record retention schedule in accordance with applicable law, including Indiana's public records retention schedule.

- B. Record Review and Audit.** Consultant agrees that INPRS, or any duly authorized representative of INPRS, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any Fund Records at any time during the term of this Consulting Agreement or at any time in accordance with applicable law, including Indiana's public records retention schedule. Upon INPRS' request and on reasonable notice, Consultant shall make such records available for review during normal business hours at Consultant's business office. Consultant shall make the persons responsible for creating and maintaining Fund Records available to INPRS during such review for the purpose of responding to INPRS' reasonable inquiries. If INPRS requests copies of Fund Records, copies shall be furnished by Consultant, at no cost to INPRS.

18. Confidentiality

Consultant understands and agrees that information, data, and materials disclosed to Consultant by or on behalf of INPRS or any of its members, participants, employees, customers, or third party service providers may contain confidential and protected information; therefore, Consultant promises and assures that data, materials, and information gathered, based upon, or disclosed to Consultant for the purpose of this Consulting Agreement will be treated as confidential and will not be disclosed to or discussed with other parties without the prior written consent of INPRS.

Notwithstanding the foregoing, confidential information shall exclude information which (a) is or becomes generally available to the public other than as a result of a breach of this Consulting Agreement by Consultant or its Agents, or (b) is already in Consultant's possession or becomes available to Consultant from a source other than INPRS or its agents, provided that such source is not known by the Consultant to be bound by a confidentiality agreement with INPRS or is not otherwise known by the Consultant to be prohibited from transmitting the information to the Consultant by a contractual, legal or fiduciary obligation.

In addition to the foregoing, the Consultant may disclose confidential information to the extent required by law, regulation or court order or if requested by any regulatory or law enforcement authority, provided that (x) where permitted by such law, regulation, court order or regulatory or law enforcement authority, the Consultant will provide INPRS with written notice, as far in advance as reasonably practicable when disclosing such confidential information, and (y) the Consultant will inform the applicable regulatory authority or other person to whom disclosure is being made of the confidential nature of the confidential information and will request such authority or other person to treat such confidential information as confidential.

The parties acknowledge that the services to be performed by Consultant for INPRS under this Consulting Agreement may require or allow access to data, materials, and information containing Social Security numbers or other personal information maintained by INPRS in its computer system or other records.

19. Force Majeure; Suspension and Termination

In the event that either party is unable to perform any of its obligations under this Consulting Agreement or to enjoy any of its benefits because of natural disaster, actions, or decrees of governmental bodies, or communication line failure not the fault of the affected party or other causes beyond a party's reasonable control ("Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance, and the failure to perform its obligations shall not be treated as a default hereunder.

20. Renewal Option

This Consulting Agreement may be renewed by INPRS in any manner authorized by law.

21. Nondiscrimination

Pursuant to IC § 22-9-1-10 and the Civil Rights Act of 1964, Consultant and its Agents, if any, shall not discriminate against any employee or applicant for employment in the performance of this Consulting Agreement. Consultant shall not discriminate with respect to the hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of Agreement. Acceptance of this Consulting Agreement also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability, or status as a veteran.

22. Conflict of Interest, Compliance with Laws, and Ethics

A. Conflict of Interest

- i.** As used in this section:
 - (a) “Immediate family” means the spouse and the unemancipated children of an individual.
 - (b) “Interested party” means:
 - (1) The individual executing this Consulting Agreement;
 - (2) An individual who has an interest of three percent (3%) or more in Consultant, if Consultant is not an individual; or
 - (3) Any member of the immediate family of an individual specified under subdivision (i) or (ii).
 - (c) “Department” means the Indiana Department of Administration.
 - (d) “Commission” means the Indiana State Ethics Commission.
- ii.** INPRS may cancel this Consulting Agreement without recourse by Consultant if any interested party is an employee of INPRS.
- iii.** INPRS will not exercise its right of cancellation under subsection 2 above if Consultant gives the Department an opinion by the Commission indicating that the existence of this Consulting Agreement and the employment by INPRS of the interested party does not violate any statute or rule relating to ethical conduct of INPRS employees. INPRS may take action, including cancellation of this Consulting Agreement, consistent with an opinion of the Commission obtained under this section.
- iv.** Consultant has an affirmative obligation under this Consulting Agreement to disclose to INPRS when an interested party is or becomes an employee of

INPRS. The obligation under this section extends only to those facts that Consultant knows or reasonably could know.

B. Laws and Ethics

- i. Consultant shall comply with all applicable federal, state, and local laws, and rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Consulting Agreement shall be reviewed by INPRS and Consultant to determine whether the provisions of this Consulting Agreement require formal modification.
- ii. Consultant and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with INPRS as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004, and reaffirmed under Executive Order 05-12, dated January 10, 2005. If Consultant is not familiar with these ethical requirements, Consultant should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission Web site at <http://www.in.gov/ethics/>. If Consultant or its Agents violate any applicable ethical standards, INPRS may, in its sole discretion, terminate this Consulting Agreement immediately upon notice to Consultant. In addition, Consultant may be subject to penalties under IC §§ 4-2-6 and 4-2-7. Consultant has an affirmative obligation under this Consulting Agreement to disclose to INPRS when any INPRS employee, their spouse or dependent children has a pecuniary interest in or derives a profit from this Consulting Agreement. The obligation under this section extends only to those facts that Consultant knows or reasonably could know.
- iii. Consultant certifies by entering into this Consulting Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees, or other statutory, regulatory, or judicially-required payments to the State of Indiana. Consultant agrees that any payments currently due to the State may be withheld from payments due to Consultant. Additionally, further work or payments may be withheld, delayed, or denied and/or this Consulting Agreement suspended until Consultant is current in its payments and has submitted proof of such payment to the State.
- iv. Consultant warrants that it has no current, pending, or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify INPRS of any such actions. During the term of such actions, Consultant agrees that INPRS may delay, withhold, or deny work under any supplement, amendment, change order, or other contractual device issued pursuant to this Consulting Agreement.
- v. If a valid dispute exists as to Consultant's liability or guilt in any action initiated by the State or its agencies, and INPRS decides to delay, withhold, or deny work to Consultant, Consultant may request that it be allowed to continue, or receive work, without delay. Consultant must submit, in writing, a request for review to INPRS. A determination by INPRS shall be binding.

- vi. Any payments that INPRS may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC § 5-17-5.
- vii. Consultant warrants that Consultant and its sub-Consultants, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for INPRS. Failure to do so may be deemed a material breach of this Consulting Agreement and grounds for immediate termination and denial of further work with INPRS.
- viii. Consultant affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- ix. As required by IC § 5-22-3-7:
 - (a) Consultant and any principals of Consultant certify that
 - (1) Consultant, except for de minimis and nonsystematic violations, has not violated the terms of IC § 24-4.7 [Telephone Solicitation Of Consumers], IC § 24-5-12 [Telephone Solicitations], or IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
 - (2) Consultant will not violate the terms of IC § 24-4.7 for the duration of the Consulting Agreement, even if IC § 24-4.7 is preempted by federal law.
 - (b) Consultant and any principals of Consultant certify that an affiliate or principal of Consultant and any agent acting on behalf of Consultant or on behalf of an affiliate or principal of Consultant:
 - (1) Except for de minimis and nonsystematic violations, has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
 - (2) Will not violate the terms of IC § 24-4.7 for the duration of the Consulting Agreement, even if IC § 24-4.7 is preempted by federal law.

23. Taxes

The State of Indiana is exempt from state, federal, and local taxes. INPRS does not agree and will not be responsible for any taxes levied on Consultant as a result of this Consulting Agreement.

24. Governing Laws

This Consulting Agreement shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in a state court of jurisdiction in the State of Indiana.

25. Disputes

- A.** Should any disputes arise with respect to this Consulting Agreement, Consultant and INPRS agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.
- B.** Consultant agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Consulting Agreement which are not affected by the dispute. Should Consultant fail to continue without delay to perform its responsibilities under this Consulting Agreement in the accomplishment of all non-disputed work, any additional costs incurred by Consultant or INPRS as a result of such failure to proceed shall be borne by Consultant, and Consultant shall make no claim against the State of Indiana for such costs. If Consultant and INPRS cannot resolve a dispute, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.
- C.** INPRS may withhold payments on disputed items pending resolution of the dispute. Except as provided in Section 12, the unintentional nonpayment by INPRS to Consultant of up to three invoices not in dispute in accordance with the terms of this Consulting Agreement will not be cause for Consultant to terminate this Consulting Agreement, and Consultant may bring suit to collect without following the disputes procedure contained herein.

26. Notices

All notices, requests, demands, or other communications required or desired to be given hereunder or under any law now or hereafter in effect shall be in writing. Such notices shall be deemed to have been given if delivered by electronic mail with acknowledgement of receipt, by facsimile with telephone confirmation of receipt, or by overnight courier, or if mailed by first class registered or certified mail, postage prepaid, and addressed as follows (or to such other address as Consultant, custodian, or INPRS from time to time may specify in writing to the others in accordance with this notice provision):

Notices to INPRS shall be sent to:

David Cooper
Chief Investment Officer
Indiana Public Retirement System
One North Capitol, Suite 001
Indianapolis, IN 46204
Tel: (317) 234-2370
Fax: (317) 234-2245
E-mail: dccopper@inprs.in.gov

With a copy to:

[INSERT]

Notices to the Consultant shall be sent to:

[INSERT]

27. Funding Cancellation

When the Board of Trustees makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Consulting Agreement, this Consulting Agreement shall be canceled. A determination by the Board that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

28. Section Headings; Interpretation

Caption and Section headings used in this Consulting Agreement are for convenience and reference only and shall not affect in any way the meaning, construction, or interpretation of this Consulting Agreement. Each party hereto and its counsel have participated fully and equally in the review and negotiation of this Consulting Agreement. The language in all parts of this Consulting Agreement shall in all cases be construed according to its fair meaning and not strictly for or against any party hereto.

29. Entire Agreement; Exhibits, Schedules, and Appendices

This Consulting Agreement, together with any and all exhibits, schedules, and appendices attached hereto, contains the entire and exclusive Consulting Agreement between the parties hereto and supersedes all previous oral and written agreements or understandings, and all contemporaneous oral and written negotiations, commitments, understandings, and communications between the parties, relating to the subject matter of the Consulting Agreement. The exhibits, schedules, and appendices attached hereto are incorporated in and made a part of this Consulting Agreement by reference.

30. Severability

If any provision of this Consulting Agreement is held by any court to be invalid, void, or unenforceable, in whole or in part, the other provisions shall remain unaffected and shall continue in full force and effect.

31. Waiver

The waiver of any breach of any provision of this Consulting Agreement by either party shall not constitute a waiver of any preceding or subsequent breach of such provision or of any other provision of this Consulting Agreement. The failure or delay of either party to exercise any right given to the party under this Consulting Agreement shall not constitute a waiver of such right, nor shall any partial exercise of any right given hereunder preclude further exercise of such right. No right conferred on either party shall be deemed waived and no breach of this Consulting Agreement excused unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

32. Assignment and Delegation

This Consulting Agreement and any of the rights or duties hereunder may not be assigned or delegated by Consultant without the prior written consent of INPRS, consent which may be granted or withheld in the INPRS' sole discretion. Any assignment of rights or delegation of duties under this Consulting Agreement, to which the parties hereto agree in writing, shall bind and inure to the benefit of the successors in interest of INPRS and Consultant.

33. Maintaining a Drug-Free Workplace

- A.** Consultant hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Consulting Agreement a drug-free workplace. Consultant will give written notice to INPRS within ten (10) days after receiving actual notice that an employee of Consultant has been convicted of a criminal drug violation occurring in Consultant's workplace.
- B.** In addition to the provisions of subsection (a) above, if the total Consulting Agreement amount set forth in this Consulting Agreement is in excess of \$25,000, Consultant hereby further agrees that this Consulting Agreement is expressly subject to the terms, conditions, and representations contained in the Drug-Free Workplace Certification ("Certification"). The Certification is hereby executed by Consultant in conjunction with this Consulting Agreement and is set forth in Section 34 of this Consulting Agreement.
- C.** It is expressly agreed that the falsification or violation of terms of the Certification referenced in Subsection (b) above, or the failure of Consultant to comply with the terms of Subsection (a) above, shall constitute a material breach of this Consulting Agreement and shall entitle INPRS to impose sanctions against Consultant including, but not limited to, suspension of Consulting Agreement payments, termination of this Consulting Agreement, and/or debarment of Consultant from doing further business with INPRS for up to three (3) years.

34. Drug-Free Workplace Certification

This Certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of an Agreement shall be made, and no Agreement, purchase order or agreement, the total amount of which exceeds \$25,000, shall be valid, unless and until this Certification has been fully executed by Consultant and made a part of the Agreement or agreement as part of the Agreement documents. False certification or violation of the Certification may result in sanctions, including, but not limited to, suspension of Agreement payments, termination of the Agreement or agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

Consultant certifies and agrees that it will provide a drug-free workplace by:

- A.** Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled

substance is prohibited in Consultant's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

- B.** Establishing a drug-free awareness program to inform employees of
 - i.** The dangers of drug abuse in the workplace;
 - ii.** Consultant's policy of maintaining a drug-free workplace;
 - iii.** Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv.** The penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- C.** Notifying all employees in the statement required by subparagraph (a) above, that as a condition of continued employment, the employee will
 - i.** Abide by the terms of the statement; and
 - ii.** Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D.** Notifying INPRS in writing within ten (10) days after receiving notice from an employee under subdivision (c)(2) above or otherwise receiving actual notice of such conviction;
- E.** Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:
 - i.** Take appropriate personnel action against the employee, up to and including termination; or
 - ii.** Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and
- F.** Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

35. Audits

Consultant acknowledges that it may be required to submit to an audit of funds paid through this Consulting Agreement. Any such audit shall be conducted in accordance with IC 5-11-1, *et seq.* and audit guidelines specified by INPRS. If an error is discovered as a result of an audit performed by Consultant or INPRS, or if Consultant becomes aware of any error through any other means, Consultant shall use commercially-reasonable efforts to promptly correct such error or to cause the appropriate party to correct such error.

36. Authority to Bind Consultant

The signatory for Consultant represents that he/she has been duly authorized to execute this Consulting Agreement on behalf of Consultant and has obtained all necessary or applicable approvals to make this Consulting Agreement fully binding upon Consultant when his/her signature is affixed, and certifies that this Consulting Agreement is not subject to further acceptance by Consultant when accepted by INPRS.

37. Changes in Work

Consultant shall not commence any additional work or change the scope of the work until authorized in writing by INPRS. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

38. Debarment and Suspension

- A.** Consultant certifies by entering into this Consulting Agreement that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Consulting Agreement by any federal agency, or by any department, agency or political subdivision of the State. The term “principal” for purposes of this Consulting Agreement means an officer, director, owner, partner, key employee, in house attorney, or in house paralegal providing services to INPRS, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Consultant.
- B.** Consultant certifies that it has verified the state and federal suspension and debarment status for all lawyers receiving funds under this Consulting Agreement and shall be solely responsible for any recoupment, penalties, or costs that might arise from use of a suspended or debarred subcontractor. Consultant shall immediately notify INPRS if any lawyer providing services under this Consulting Agreement becomes debarred or suspended, and shall, at INPRS’ request, take all steps required to terminate work to be performed by such person under this Consulting Agreement.

39. Penalties/Interest/Attorney’s Fees

INPRS will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney’s fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, and IC § 34-13-1.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from INPRS’ failure to make prompt payment shall be based solely on the amount of funding originating from INPRS and shall not be based on funding from federal or other sources.

40. Minority and Women’s Business Enterprise Compliance

Consultant agrees to comply fully with the provisions of Consultant’s Minority and Women’s Business Enterprise (“MBE/WBE”) participation plans (if applicable), and agrees to comply with all applicable MBE/WBE statutory and administrative code requirements and obligations, including IC § 4-13-16.5 and 25 IAC 5. Consultant further agrees to cooperate fully with the MBE/WBE division to facilitate the promotion, monitoring, and enforcement of the policies and goals of MBE/WBE programs, including any and all assessments, compliance reviews, and audits that may be required.

41. Regulatory Communications.

Consultant agrees to provide all statements, responses, and filings made with federal or state of Indiana regulatory bodies within thirty (30) days of request by INPRS. These may be related to such topics as current or proposed industry regulations, proposed statutory changes, or any other topics affecting INPRS or financial sector.

42. Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he is the contracting party, or that he is the representative, agent, member, or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation, or partnership represented by him, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he has not received or paid any sum of money or other consideration for the execution of this Consulting Agreement other than that which appears upon the face of the Consulting Agreement.

[Signature page follows]

The parties having read and understood the foregoing terms of this Consulting Agreement do by their respective signatures dated below hereby agree to the terms hereof.

CONSULTANT

By: _____

Printed Name: _____

Title: _____

Date: _____

INDIANA PUBLIC RETIREMENT SYSTEM

By: _____

Printed Name: Steve Russo

Title: Executive Director

Date: _____